

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
AIKEN DIVISION

T. Terell Bryan, #254638, a/k/a Terence  
Terell Bryan,

Plaintiff,

vs.

F.B.I.; S.L.E.D.; U.S. Attorney (S.C.);  
U.S. Attorney (Guam); Attorney General  
(S.C.); S.C.D.C.; Jon Ozmint; Donna  
Hodges; Jimmy Sligh; Linda Dunlap;  
Ann Moak; Russell Campbell; Gerri  
Miro; Robert Woods; Amy R. Enlow;  
Cathy C. Jones; Victoria O. Balogun;  
Nurse Tipton; Warden McCall; Doctor  
Benjamin F. Lewis, Jr.; Miriam  
Cocciolone; James Simmons, III;  
Greenville Co. Clerk; Greenville Co.  
Solicitor; Greenville Co. Magistrate,

Defendants.

C/A No.: 1:10-2554-TLW-SVH

**ORDER**

By Order filed April 7, 2011, the undersigned accepted, in part, the Report and Recommendation filed by Magistrate Judge Shiva V. Hodges on February 7, 2011. To the extent that the Report recommended dismissal of Defendants FBI, SLED, U.S. Attorney for S.C., U.S. Attorney for Guam, Attorney General of S.C., the Greenville County Clerk of Court, the Greenville County Solicitor, and Greenville County Magistrate Judge for failing to respond to Plaintiff's letters concerning another inmate, this Court agreed that dismissal was appropriate. However, in light of allegations by plaintiff in his complaint and in his objections to the Report concerning plaintiff's own health and safety, the Court found it appropriate to remand the case to the Magistrate Judge for

further consideration as to whether service of process should issue as to these defendants. The Court did dismiss the South Carolina Department of Corrections for the reasons set forth in the Report. Thereafter, the plaintiff filed correspondence captioned “Objections to Order and Reply to Defendants.” (Doc. # 62). Out of an abundance of caution, this Court has considered this filing as a motion pursuant to Rule 59(e) of the Federal Rules of Civil Procedure.

Rule 59(e) of the Federal Rules of Civil Procedure provides that:

Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

Although Rule 59(e) does not itself provide a standard under which a District Court may grant a motion to alter or amend a judgment, the Fourth Circuit Court of Appeals has recognized three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. Pacific Ins. Co. v. American National Ins. Co., 148 F.3d 396 (4<sup>th</sup> Cir. 1998) *cert. denied*, 525 U.S. 1104 (1999). Thus, Rule 59(e) permits a District Court to correct its own errors, “sparing the parties and the appellate courts the burden of unnecessary appellate proceedings.” Id. (citing Russell v. Delco Remy Div. of Gen. Motors Corp., 51 F.3d 746, 749 (7<sup>th</sup> Cir. 1995)). Rule 59(e) motions may not be used, however, to raise arguments which could have been raised prior to the issuance of the judgment, nor may they be used to argue a case under a novel legal theory that the party had the ability to address in the first instance. Id. Similarly, if a party relies on newly discovered evidence in its Rule 59(e) motion, the party must produce a legitimate justification for not presenting the evidence during the earlier proceeding. Id. (citing Small v. Hunt, 98 F.3d 789, 798 (4<sup>th</sup> Cir. 1996)). In general, reconsideration of a judgment after its entry is an extraordinary

remedy which should be used sparingly. Id.

Based upon the undersigned's review of the record in this case, the undersigned concludes that no legally sufficient basis exists to alter or amend this Court's April 7, 2011 Order in this case. In particular, the plaintiffs fail to: show any intervening change in controlling law; account for any new evidence; or show clear error of law or manifest injustice. Therefore, plaintiffs' motion to alter or amend judgment is **DENIED**. (Doc. # 62).

**IT IS SO ORDERED.**

s/ Terry L. Wooten  
**TERRY L. WOOTEN**  
**UNITED STATES DISTRICT COURT JUDGE**

April 25, 2011  
Florence, South Carolina